

STATE OF COLORADO
Department of State
1700 Broadway
Suite 250
Denver, CO 80290



Mike Coffman
Secretary of State

William A. Hobbs
Deputy Secretary of State

February 28, 2008

VIA EMAIL AND U.S. MAIL

Mr. David Hart
President
Hart InterCivic
P.O. Box 80649
Austin, TX 78728

Re: Colorado Voting System

Dear Mr. Hart:

Your company submitted a voting system to the Colorado Secretary of State to be tested and considered for certification for use in Colorado elections. On December 17, 2007, I notified you of the decertification of the Hart Central Count Scanners, Ballot Now Software, and eScan Precinct Scanner voting equipment as well as the conditional certification of the eSlate Direct Record Electronic (DRE) and the Software System 6.0 (EMS).

On February 11, 2008, Governor Bill Ritter signed House Bill 08-1155 into law. This legislation extends my authority over the 2007 testing process and allows for additional testing and communication with the vendors and the counties. The legislation authorizes me to amend or rescind any of the orders I issued on December 17, 2007 decertifying a voting system if I re-test the system or otherwise demonstrate that the major deficiencies identified in my December 17 order have been resolved or mitigated. In deciding to amend or rescind an order, the legislation requires me to consider county accuracy and security procedures, audits, processing functions, and other relevant procedures in accordance with the laws and rules governing the conduct of elections. In accordance with H.B. 08-1155, I have decided to recertify the eScan and Central Count Scanner components with conditions.

The major deficiencies of the eScan and Central Count Scanner, as identified by my office, included a failure to count ballots correctly when there are extraneous marks on the ballot. Specifically, the system inconsistently tabulated ballots that contained a dot or a line in or across a voting box. The system is unable to consistently determine whether or not an extraneous mark is a vote. In cases where the voter makes a choice for a candidate or question and the system records an additional vote for that race or question because of an extraneous mark in another voting box, the Hart optical scanners accurately detect the "overvote" and flag the ballot for review by election judges, who ensure the voter's intent is properly recorded. However, in an "undervote" situation, where a voter decides not to vote on a particular race or issue but unintentionally rests his or her pen on a voting box, the inability of the system to consistently differentiate between a vote and an extraneous mark sometimes results in a vote being cast that was unintended by the voter.

To mitigate the issue, the Testing Board developed draft procedures at my request that might be used by the counties to identify ballots containing extraneous marks. The process required election judges to review of every ballot prior to scanning and to determine actual voter intent for any ballot where an extraneous mark is found in a voting box.

After listening to public testimony on February 21 and February 26 and reviewing the draft procedures, I have concluded that the draft process would be ineffectual and unnecessary. The testimony presented demonstrated that it is extremely unlikely that extraneous marks could affect the outcome of a race. Even in that rare circumstance, there would be a mandatory recount, because the difference between candidates or races would be less than one-half of one percent of the highest number of votes cast, and the ballots could then be visually inspected, which would identify and correct any tabulating errors due to extraneous marks.

Nevertheless, as a condition for use, counties using the Hart eScan and Central Count Scanner will be required to print instructions on the ballot in accordance with § 1-5-407, C.R.S., advising electors to review their ballots for extraneous marks to ensure that their ballots are counted correctly. Additionally, in the event of a mandatory recount, counties will be required to visually inspect every ballot to check for the occurrence of extraneous marks.

Although the Testing Board tested voting systems for strict compliance with state law and the Secretary of State Election Rules, a voting system may be certified as long as it substantially complies with the requirements of the Colorado Election Code, the Secretary's Rules, and any additional testing required by this office. Section 1-1-103(3), C.R.S. (2007); Election Rule 45.3.2; Election Rule 45.6.3.1. A system substantially complies with the law if the purpose of the law is achieved despite the failure to strictly comply with each and every requirement.

I recognize that additional issues were identified by the Testing Board with respect to all components of the Hart voting system. However, in accordance with HB1155, I have considered additional information which I conclude has brought the eScan, Central Count Scanner and Ballot Now software into substantial compliance with Colorado law. I therefore rescind my December 17, 2007 order regarding this equipment, and now order that this equipment is conditionally certified for use in the State of Colorado.

For the components or software listed above as conditionally certified, please review the "Hart InterCivic Project Overview Binder – A.2", which is posted on the Secretary of State's website and which is incorporated into this decision by reference, for information regarding the necessary conditions to be fulfilled in order for such equipment to be used.

Sincerely,



Mike Coffman
Secretary of State

cc: Representative Paul Weissmann, Chairman, House Committee on State, Veterans, & Military Affairs
Senator Abel Tapia, Chairman, Senate Committee on State, Veterans & Military Affairs
County Clerk and Recorders of counties using Hart voting systems:
Melanie Woodward, Clerk and Recorder, Alamosa County

Sheila Emick, Clerk and Recorder, Baca County
Patti Nickell, Clerk and Recorder, Bent County
Hillary Hall, Clerk and Recorder, Boulder County
Joyce Reno, Clerk and Recorder, Chaffee County
Kay Feyh, Clerk and Recorder, Cheyenne County
Pam Phipps, Clerk and Recorder, Clear Creek County
Lawrence Gallegos, Clerk and Recorder, Conejos County
Dolores Burns, Clerk and Recorder, Costilla County
Lucile Nichols, Clerk and Recorder, Crowley County
Debbie Livengood, Clerk and Recorder, Custer County
Ann B. Eddins, Clerk and Recorder, Delta County
LaRita Randolph, Clerk and Recorder, Dolores County
Jack Arrowsmith, Clerk and Recorder, Douglas County
Teak Simonton, Clerk and Recorder, Eagle County
Norma Hatfield, Clerk and Recorder, Fremont County
Jean Alberico, Clerk and Recorder, Garfield County
Jessica Lovingier, Clerk and Recorder, Gilpin County
Sara Rosene, Clerk and Recorder, Grand County
Stella Dominguez, Clerk and Recorder, Gunnison County
Linda Pavich Ragle, Clerk and Recorder, Hinsdale County
Judy Benine, Clerk and Recorder, Huerfano County
Hayle Johnson, Clerk and Recorder, Jackson County
Debra Lening, Clerk and Recorder, Kiowa County
Della Calhoon, Clerk and Recorder, Kit Carson County
Patricia Berger, Clerk and Recorder, Lake County
Bernard Gonzales, Clerk and Recorder, Las Animas County
Corinne Lengel, Clerk and Recorder, Lincoln County
Pamela Schneider, Clerk and Recorder, Logan County
Elaine Sullivan, Clerk and Recorder, Moffat County
Carol Tullis, Clerk and Recorder, Montezuma County
Fran Long, Clerk and Recorder, Montrose County
Connie Ingmire, Clerk and Recorder, Morgan County
Sharon Sisroy, Clerk and Recorder, Otero County
Michelle Ann Nauer, Clerk and Recorder, Ouray County
Debbi Green, Clerk and Recorder, Park County
Maedene Beth Cumming, Clerk and Recorder, Phillips County
Dorothy McCaslin, Clerk and Recorder, Prowers County
Nancy Amick, Clerk and Recorder, Rio Blanco County
Sandy Jackson, Clerk and Recorder, Rio Grande County
Kay Weinland, Clerk and Recorder, Routt County
Dorothy Zanoni, Clerk and Recorder, San Juan County
Peggy Nerlin, Clerk and Recorder, San Miguel County
Patrice Carter, Clerk and Recorder, Sedgwick County
Cheri Brunvand, Clerk and Recorder, Summit County
Garland Wahl, Clerk and Recorder, Washington County
Beverly Ann Wenger, Clerk and Recorder, Yuma County